

July 13, 2001

Nicholas J. Scobbo, Jr., Esq.  
Ferriter Scobbo & Rodophele, PC  
75 State Street  
Boston, MA 02109

Re: Massachusetts Municipal Wholesale Electric Company, D.T.E. 99-91-A

Dear Attorney Scobbo:

On March 24, 2000, the Massachusetts Department of Telecommunications & Energy ("Department") issued an Order in Massachusetts Municipal Wholesale Electric Company, D.T.E. 99-91 ("Order") approving a comprehensive debt restructuring plan by Massachusetts Municipal Wholesale Electric Company ("MMWEC") in the amount of \$1,590,056,000. On May 11, 2001, MMWEC filed a letter requesting that the Department make "technical corrections" to certain statements in the Order. MMWEC seeks eight language changes. MMWEC also requests clarification of two conditions of the Order which it also characterizes as "technical corrections." On May 22, 2001, Reading Municipal Light Department ("RMLD"), the sole intervenor in the proceeding, raised procedural and substantive objections to MMWEC's request. Additional letters addressing these issues were filed by MMWEC on May 29, 2001 and June 5, 2001, and by RMLD on June 1, 2001 and June 6, 2001.

The Department conditioned approval of the refinancing on its review of:  
1) MMWEC's amended and restated General Bond Resolution ("GBR") when approved by MMWEC's board of directors; and 2) any MMWEC board of directors' resolution or approval of "any bond, debt, or note refinancing or refunding" undertaken pursuant to the Order. D.T.E. 99-91, at 21-22. MMWEC states that these conditions "suggest" that it must submit these items for Department review prior to issuance of the bonds. MMWEC argues that it cannot submit these documents for approval prior to the issuance because, "as a practical matter, there will be no interval of time" between the MMWEC vote approving the issuance, and the issuance itself. MMWEC argues that the vote and the actual issuance are "virtually simultaneous" because the "precise details and terms of the issuance are subject to conditions existing in the financial markets at the time of issuance and are therefore subject to negotiation and revision virtually up to the time" MMWEC's board votes to issue the bonds. Therefore, MMWEC requests that the Department "clarify" the language of the ordering clauses to indicate that Department review will occur only after the bonds are issued (MMWEC May 11<sup>th</sup> Letter at 3).

RMLD argues that MMWEC's request is untimely and procedurally defective as it is not in the form of a properly filed motion for reconsideration or rehearing. Procedurally, RMLD argues that MMWEC can not avail itself of the Department's reconsideration process set forth in 220 C.M.R. 1.11(10), because it is well beyond the 20-day requirement of that section (RMLD May 22<sup>nd</sup> Letter at 2). RMLD further argues that MMWEC has not properly met the requirements for a rehearing pursuant to 220 C.M.R. 1.11(8) as it has failed to provide any demonstration of "good cause" as required by that section (id.)

Substantively, RMLD argues that MMWEC's use of the term "technical corrections" is misleading as it does not merely seek to correct typographical or mathematical errors, but rather seeks "significant, substantive changes, including the elimination of two of the conditions of the Department's Order" (id. at 2-3). RMLD also disputes MMWEC's contention that it is not possible to review the GBR before the bonds are issued. RMLD argues that it is important for the Department to review the GBR before the bonds are issued as it will be "used for years to come" (id. at 3). RMLD also argues that the Department must review the bond issuance to "make sure that the financing benefits the MMWEC project participants and its ratepayers" (id.). RMLD requests that the Department require MMWEC to refile its request in the proper form as a motion for a rehearing, and also requests the opportunity to be heard (e.g. the opportunity to conduct discovery and cross-examination).

The Department has reviewed MMWEC's requests, RMLD's response, and has examined the existing record pertaining to the Order. Based upon our initial review of the record, some of MMWEC's requests for technical corrections appear, at least on their face, to be reasonable.<sup>1</sup> Other requested changes, such as how the Order describes the existing GBR, may not be material or relevant to the ability of MMWEC to issue bonds under the existing Order. The fact that a Department order may describe something differently than how a petitioner would have preferred does not, in and of itself, constitute sufficient grounds for reconsideration of a Department order. See Boston Edison Company, D.T.E. 98-118-A at 12 (1999).

The language of the ordering clauses is clear and unambiguous in that it conditions the approvals contained in the Order as "subject to receipt and review by the Department of the amended and restated [GBR] when approved by the [MMWEC] Board of Directors." D.T.E. 99-91, at 21. While MMWEC characterizes its letter as a request for "technical corrections," its request goes far beyond the scope of technical corrections and, instead, seeks substantive amendments to the Department's Order. Although MMWEC asserts that prior Department review is not feasible because of the limited time between approval of the GBR and

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<sup>1</sup> The Department notes that at least one of the dollar amounts that MMWEC seeks to correct is identical to the dollar amount specified in the draft order submitted by MMWEC during the proceeding.

bond issuance may hinder MMWEC's ability to refinance at the best available rate, it has not sufficiently supported this contention.

Certain of RMLD's procedural objections have merit. MMWEC is clearly beyond the time period permitted to file a motion for clarification or reconsideration. 220 C.M.R. § 1.11(10). An appropriate procedural course would be to deny MMWEC's request with leave to refile an appropriate motion to reopen the hearing pursuant to 220 C.M.R. § 1.11(8). However, the Department is concerned that neither RMLD nor other MMWEC participants or ratepayers would be well-served by any unnecessary delay in MMWEC's ability to issue the bonds. As a result, the Department will construe MMWEC's letter as motion to reopen the record pursuant to 220 C.M.R. § 1.11(8).

As MMWEC has raised legitimate issues about its ability to issue bonds with the language and conditions of the existing financing Order, good cause exists to reopen the record to take additional evidence in this proceeding. Reopening the record for the purpose of taking additional evidence on MMWEC's requested modifications to the Order provides an efficient means to address the issues raised by MMWEC's request without jeopardizing the proposed bond issuance.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

cc: Service List - D.T.E. 99-91